

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY ROBERT MUGLER,

Defendant-Appellant.

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UNPUBLISHED

September 16, 2014

No. 316185

Macomb Circuit Court

LC No. 2012-004514-FC

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

A jury convicted defendant of felonious assault, MCL 750.82, two counts of discharging a firearm in/at a dwelling or occupied structure, MCL 750.234b, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227B, for assaulting Officers Michael Notoriano and Richard Soulliere.<sup>1</sup> Because the evidence was sufficient to support defendant's convictions, we affirm.

On August 21, 2012, according to defendant's former girlfriend, Erin Waldorf, defendant appeared intoxicated and upset. He spoke of suicide and took a concoction of pills. Afraid that he would attempt to hurt himself, Waldorf hid the ammunition for defendant's shotgun. Defendant discovered the bullets, however, and loaded his weapon. Waldorf called 911 for assistance, and the call was played for the jury. During the call, defendant told Waldorf that if the police came, he would "shoot" them too. A gunshot could be heard on the 911 recording shortly after defendant's statement regarding the police. Multiple witnesses also heard a gunshot come from defendant's apartment. Police arrived on the scene and officers saw defendant through his balcony window. The officers heard a gunshot and ordered defendant to "show himself" and drop the gun. Defendant fired once more and the officers heard defendant rack the shotgun. Defendant came out onto the balcony, carrying the shotgun in one hand. The responding officers feared for their lives and, when defendant refused to drop his gun, an officer fired a single shot striking defendant in the abdomen.

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<sup>1</sup> The jury acquitted defendant on a charge of assault with intent to murder, MCL 750.83.

On appeal, defendant challenges the sufficiency of the evidence supporting his felonious assault conviction. The elements of felonious assault are: “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007) (citation omitted). Defendant challenges only the third element; specifically, he contends on appeal that the evidence was insufficient to show that he acted “with intent to injure or place the victim in reasonable apprehension of an immediate battery.” He maintains that, in actuality, he was despondent and suicidal, not intent on causing injury or placing the police in apprehension of a battery.

We review de novo a challenge to the sufficiency of the evidence. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). In ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court “must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Questions regarding witness credibility are for the jury, and on appeal we resolve any conflicts in the evidence in favor of the prosecution. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). “It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

“Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (citation omitted). In particular, an actor’s intent may be inferred from all the surrounding facts and circumstances, including the defendant’s conduct. See *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992) (citation omitted). “Because it is difficult to prove an actor’s state of mind, only minimal circumstantial evidence is required.” *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

Contrary to defendant’s argument on appeal, the prosecution presented sufficient evidence to demonstrate that defendant committed an assault with intent to injure or place the police officers in reasonable apprehension of an immediate battery using a shotgun. Waldorf testified that defendant said, “Go ahead and call the cops, I’ll shoot them too.” His threats, and a shotgun blast, could be heard on the 911 call. Officer Notoriano testified that when police arrived at the apartment, he heard a shotgun blast followed by defendant racking the shotgun. Officer Notoriano stated that defendant exited his apartment onto the balcony with the shotgun and that the shotgun was pointed toward the police officers. Specifically, according to Officer Notoriano, defendant held the shotgun in his right hand, near the trigger mechanism, “and he had it leveled off in a direction that the barrel was pointed towards myself and Officer Soulliere.” Officer Soulliere confirmed that he also heard a shotgun blast and he stated that he saw defendant come out onto the balcony holding the shotgun in one hand. Although Officer Soulliere did not see the weapon pointed at the police, both officers testified that they had concerns about being shot by defendant. Officer Notoriano instructed defendant to drop the shotgun, but he did not comply, and the episode only ended when Officer Notoriano shot defendant. Viewed in a light most favorable to the prosecution, the evidence demonstrates that defendant made threatening remarks regarding the police, fired the shotgun, subsequently racked

the gun, and, according to Officer Notoriano, pointed the gun at police, which is sufficient evidence to prove intent to injure the police officers or place them in reasonable apprehension of an immediate battery.

To the extent defendant argues that the evidence was indicative of his despondent, suicidal motivation rather than an intent to commit felonious assault, what inferences to draw from the evidence and how to weigh the evidence presented questions for the jury. See *Hardiman*, 466 Mich at 428. As discussed, defendant's conduct was such that the jury could reasonably infer his intent to injure police or place them in a reasonable apprehension of an imminent battery. See *Lawton*, 196 Mich App at 349. See also *People v Reeves*, 458 Mich 236, 244; 580 NW2d 433 (1998) (recognizing it is an assailant's "overt conduct" which causes a victim to reasonably apprehend an imminent battery). In sum, considered in a light most favorable to the prosecution, the evidence was sufficient to enable a reasonable trier of fact to find defendant guilty of felonious assault beyond a reasonable doubt.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Karen M. Fort Hood